

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

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SPECIAL CIVIL APPLICATION No 2959 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

JAYAM METALS PVT. LTD.

Versus

REGIONAL PROVIDENT FUND COMMISSIONER

Appearance:

MR KM PATEL for Petitioner

MR JD AJMERA for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 24/06/97

ORAL JUDGEMENT

1. Rule. Mr.J.D.Ajmera waives service of rule on behalf of respondent. On the request of the parties the matter is taken up for final hearing right today.
2. This Special Civil Application is directed against the order dated 21.11.96 passed by the Regional Provident Fund Commissioner, Baroda in the matter of proceedings held under S.14B of the Employees Provident

Fund and Miscellaneous Provisions Act, 1952 against the petitioner - Company whereby for belated payment, the damages have been imposed at the rate of 50% P.A. for 18 defaults in all for the months on and from September 1992 to September 1995. The only grievance, which has been raised by the learned counsel for the petitioner against this impugned order, is that out of these 18 defaults, for 14 months there is a delay of less than 2 months and the other 4 defaults are for a period more than 2 months or may be even more than 4 months. Mr. Patel has submitted that while passing this impugned order, the Regional Provident Fund Commissioner, Baroda has not taken into consideration the amendments made vide Notification dated 16.8.91 issued by the Government of India i.e. newly inserted Para 8-A of the Employees Deposit Linked Insurance Scheme, 1976, 10-A of the Employees Family Pension Scheme, 1971 and 32-A of the Employees Provident Fund Scheme 1952. In Accordance with these amendments, in case the delay is less than 2 months, the damages are to be recovered at the rate of 17% P.A., in case it is 2 months or more but less than 4 months, then 22% P.A. and in cases where it is 4 months and above but less than 6 months, it is 27% P.A. and where it is 6 months and above, the damages are to be recovered at the rate of 37% P.A. He has submitted that in no case out of the 18 defaults, the damages could be imposed to the extent of 50% P.A. as even in cases where the delay is 6 months and above, the maximum damages to be recovered are 37% P.A. only and, therefore, the imposition of damages at the rate of 50% P.A. is contrary to the amendments dated 16.8.91 in the Schemes, as aforesaid.

3. This contention raised on behalf of the petitioner appears to be correct. It is, therefore, found that the part of the impugned order imposing damages to the extent of 50% P.A. is not in conformity with the amended provisions, referred to above. This part of the order imposing damages to the extent of 50% P.A., as contained in the impugned order dated 21.11.96 alongwith the consequential order dated 9.1.97 passed by the Regional Provident Fund Commissioner, Baroda is, therefore, set aside. The matter is, therefore, remanded back to the Regional Provident Fund Commissioner, Baroda to decide the question of the amount of the damages to be imposed and recovered afresh in accordance with the amendments made by Notification dated 16.8.91 through Paras 8-A, 10-A and 32-A in the Employees Deposit Linked Insurance Scheme, 1976; Employees Family Pension Scheme, 1971 and Employees Provident Fund Scheme 1952 respectively in accordance with law after hearing both

the sides.

4. This Special Civil Application is allowed. Rule is made absolute in the terms as aforesaid with no order as to costs.

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